

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

June 22, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0078-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

ROY H. LIDDICOAT,

Petitioner-Appellant,

v.

KAY F. LIDDICOAT,

Respondent-Respondent.

APPEAL from an order of the circuit court for Dane County:
GERALD C. NICHOL, Judge. *Affirmed.*

Before Gartzke, P.J., Sundby and Vergeront, JJ.

PER CURIAM. Roy Liddicoat appeals from an order construing a disputed clause in a divorce stipulation. The trial court held the clause ambiguous, and interpreted it to award Roy's ex-wife, Kay Liddicoat, a 32.7% share of his monthly payments received from the Wisconsin Retirement Fund.

He contends that the plain meaning of the clause only allows Kay a 7.9% share of that pension. We agree with Roy that the clause is unambiguous. However, we conclude that its plain meaning provides Kay the 32.7% share ordered by the trial court. Although we apply a different rationale, we therefore affirm.¹

The parties divorced in 1982, after twenty-three years of marriage during which Roy had continuously accrued benefits under the Wisconsin Retirement System. The parties stipulated to a division of those benefits as follows:

The petitioner's pension or retirement with the State Teachers Retirement System shall be payable to the parties, as, if and when payable to petitioner. The respondent's share shall be 50% of the benefits attributable to the petitioner's earnings during marriage.

Roy worked twelve more years before retiring, for a total of thirty-five years under the retirement system. By doing so, through longevity, retirement age, salary increases, and legislative changes, he provided himself with a \$2,733-per-month pension. Had he retired in 1982, he would have received only a \$431-per-month pension. This dispute arose when Kay sought a pro rata share of the \$2,733 current benefit. Roy is willing to give her a pro rata share only of the \$431 figure.

A divorce stipulation incorporated in the judgment is a binding contract. *Norman v. Norman*, 117 Wis.2d 80, 82, 342 N.W.2d 780, 781 (Ct. App. 1983). Construing an unambiguous contract is a question of law. *Patti v. Western Mach. Co.*, 72 Wis.2d 348, 353, 241 N.W.2d 158, 161 (1976). Whether a contract is ambiguous is also a question of law which we decide independently of the trial court's decision. See *Moran v. Shern*, 60 Wis.2d 39, 46-47, 208 N.W.2d 348, 351-52 (1973). A contract is ambiguous only if it is reasonably susceptible to more than one meaning. *Central Auto Co. v. Reichert*, 87 Wis.2d 9, 19, 273 N.W.2d 360, 364-65 (Ct. App. 1978).

¹ This is an expedited appeal under RULE 809.17, STATS.

On appeal, Roy contends that the stipulation plainly awards Kay a share in his pension as it would have been valued at retirement in 1982, under then-existing facts and law, rather than its actual value in 1994, after it was greatly increased by subsequent events. We disagree. The stipulation does not award Kay a portion of a hypothetical pension. It plainly awards her a percentage *as* payable to Roy and when payable to him. That has turned out to be \$2,733 in 1994. No other reasonable interpretation is available.

The stipulation calculates Kay's share as fifty percent of the benefits attributable to earnings during the marriage. Under the retirement system's formula for computing pensions, each year of employment counts the same, regardless of the salary earned during that year. Twenty-three/thirty-fifth's of Roy's \$2,733 is therefore attributable to earnings during the marriage. Fifty percent of that amount is \$893, the amount awarded to Kay.

By the Court. – Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.